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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS**DOCKETED**

TOM FORESE - Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

APR 11 2017

DOCKETED BY

GB

In the matter of:

DOCKET NO. S-20973A-16-0199

TRACY N. WENGERT (CRD #3182678), and
JEANETTE WENGERT, husband and wife,

DECISION NO. 76074

Respondents.

**ORDER TO CEASE AND DESIST,
ORDER FOR REVOCATION, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME
BY: TRACY N. WENGERT AND
JEANETTE WENGERT**

Respondents Tracy N. Wengert and Jeanette Wengert (collectively, "Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"), and Articles 7 and 8 of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("Investment Management Act") with respect to this Order To Cease And Desist, Order for Revocation, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order"). Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding and any other proceeding in which the Commission is a party, the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.**FINDINGS OF FACT**

1. At all times relevant to this matter, Tracy N. Wengert ("Wengert") was married to Jeanette Wengert, and a resident of Arizona.

1 2. From February 18, 1999 until January 30, 2015, Wengert was registered with the
2 Financial Industry Regulatory Authority¹ ("FINRA") and the Commission, in association with dealer
3 Transamerica Financial Advisors, Inc. ("Transamerica"), as a securities salesman, based in Arizona.

4 3. From August 1, 2006 until January 30, 2015, Wengert was licensed with the
5 Commission, in association with investment adviser Transamerica, as an investment adviser
6 representative, based in Arizona.

7 4. Jeanette Wengert ("Respondent Spouse") was at all times relevant, the spouse of
8 Wengert. Respondent Spouse is joined in this action under A.R.S. § 44-2031 (C) solely for the purposes
9 of determining the liability of the marital community.

10 5. At all times relevant to this Order, Wengert has acted for his own benefit and for the
11 benefit or in furtherance of his marital community.

12 6. Between 2010 through 2015, Wengert, while associated with Transamerica, was the
13 account executive for five Arizona Investors' individual retirement accounts [all five Investors may be
14 collectively referred to as "TDA Investors"].

15 7. The TDA Investors informed Wengert that they were each looking for a secure and low-
16 risk investment; given that they were either retired or getting close to retirement age, and lacked expertise
17 with little-to-no experience in handling their financial affairs.

18 8. Wengert suggested to four TDA Investors to close out their Transamerica retirement
19 accounts, and open accounts with TD Ameritrade, Inc.² ("TD Ameritrade").

20 9. Each TDA Investor believed that their TD Ameritrade account would be a secure and
21 low-risk investment.

22 10. Wengert represented to a sixty-eight year old TDA Investor that if she opened a TD
23 Ameritrade account she would have more investment choices.

24
25
26 ¹ FINRA is a non-governmental self-regulatory organization (SRO) authorized as a national securities association of
broker-dealers, under Section 15A of the Securities Act of 1934.

² TD Ameritrade, Inc., is a dealer firm registered with FINRA (CRD #7870).

1 11. The TDA Investors, as per the recommendation of the Wengert, opened individual TD
2 Ameritrade accounts. Wengert's name was not on any of the TDA Investors' accounts; however
3 Wengert was present and assisted each TDA Investor when they opened their individual TD Ameritrade
4 accounts. Wengert was given each TDA Investor's log-in information, and was orally given discretion
5 by each TDA Investor to execute trades on their behalf. Wengert never obtained written discretionary
6 authority to make transactions on behalf of the TDA Investors' accounts.

7 12. Wengert failed to execute TD Ameritrade's Trading Authorization Agreement ("TAA")
8 authorizing him to trade on behalf of the TDA Investors. In this instance, the TAA would have been a
9 signed formal agreement between Wengert and each TDA Investor, where they would have authorized
10 Wengert to act as an authorized agent on their behalf. The TAA would have notified TD Ameritrade
11 that Wengert was an authorized agent to trade on behalf of each of the TDA Investor's accounts.

12 13. Wengert failed to disclose to the TDA Investors that Wengert was not registered as a
13 securities salesman with TD Ameritrade, nor was he authorized to handle their TD Ameritrade accounts
14 through his employment and affiliation with Transamerica.

15 14. At no time did the TDA Investors make any of the trades in their own individual TD
16 Ameritrade accounts. Each TDA Investor trusted Wengert to execute trades on their behalf. The TDA
17 Investors admitted they lacked investment expertise and experience and relied solely on the Wengert to
18 regularly update them on the status of their individual TD Ameritrade accounts.

19 15. Wengert disclosed to Investor A and Investor D that he would trade in Apple, Inc.
20 ("Apple") stocks, because it was a large and reputable company.

21 16. Wengert failed to properly disclose any potential risks associated with option trading,
22 and that option trading is a more aggressive form of investment. Wengert's actions resulted in all of the
23 TDA Investors losing substantial amounts of money over short periods of time.

24 17. All TDA Investors paid commissions to TD Ameritrade for every transaction executed.
25 TD Ameritrade automatically deducted the fees directly from each individual TDA Investors' account.
26

1 In addition, at least two of the TDA Investors compensated Wengert for executing trades through the
2 Investors' TD Ameritrade accounts, specifically:

- 3 • Investor B paid Wengert approximately \$24,400; and
- 4 • Investor E paid Wengert [from September 2013 through December 2013] approximately
5 \$96,000.

6 18. In a document Wengert submitted to FINRA³, he acknowledged that "Investor E paid
7 him approximately \$96,000" for compensation.

8 19. Wengert failed to disclose or provide an invoice to Investor E regarding any monies
9 made or how the compensation was to be calculated.

10 20. The TDA Investors collectively invested approximately \$1,860,980 into their TD
11 Ameritrade accounts. At least four of the TDA Investors received back approximately \$338,580. The
12 principal amount of the TDA Investors' initial loss was approximately \$1,522,400.

13 TRANSAMERICA

14 21. From 2010 through 2015, Wengert failed to disclose or update his annual disclosure
15 forms to Transamerica regarding his outside business activities, specifically: his handling the TDA
16 Investors' TD Ameritrade accounts and executing trades on behalf of the TDA Investors' accounts, in
17 or through TD Ameritrade.

18 22. On January 5, 2015, Transamerica began an investigation of Wengert in response to a
19 civil suit filed against him by Investor B. At that time, Wengert was placed on suspension by
20 Transamerica.

21 23. On or about January 30, 2015, Transamerica terminated Wengert, for cause.

22 24. On February 2, 2015, Transamerica filed a Uniform Termination Notice for Securities
23 Industry Registration ("Form U5"), terminating Wengert's association with Transamerica and
24 terminating Wengert's registration with FINRA. Wengert is alleged to have managed client accounts on

25 _____
26 ³ In August 2015, Respondent Tracy N. Wengert filed an Answer with FINRA, in response to Investor E's Statement of Claim and Demand for Arbitration filed against the Respondent. Respondent Tracy N. Wengert admitted in his response that he was paid approximately \$96,000 by Investor E.

1 a discretionary basis without approval or oversight through another broker-dealer, namely TD
2 Ameritrade.

3 25. On September 25, 2015, Transamerica amended Wengert's Form U5 to disclose a
4 customer arbitration filing alleging that Wengert established accounts for the client outside of
5 Transamerica and made unsuitable trades.

6 **FINRA**

7 26. In connection with Wengert's for cause termination from Transamerica, FINRA's
8 Department of Enforcement conducted an investigation into Wengert's conduct as reported by
9 Transamerica Form U5 filing.

10 27. Wengert entered into a FINRA Letter of Acceptance, Waiver and Consent ("AWC")
11 which was accepted by FINRA on October 29, 2015.

12 28. The AWC states, in connection with an investigation by FINRA's Department of
13 Enforcement, Wengert is alleged to have opened brokerage accounts outside of the Firm on behalf
14 of Firm customers and engaged in unsuitable trading.

15 29. Under the AWC, Wengert agreed to a permanent bar from association with any
16 FINRA-regulated broker-dealer in any capacity, for failure to comply with FINRA Rules,
17 specifically: Wengert failed to produce FINRA requested documents and information. The bar
18 became effective on October 29, 2015.

19 30. Wengert is not currently registered with FINRA or the Commission.

20 31. Notwithstanding that Wengert is not currently registered with the Commission, under
21 A.R.S. §§ 44-1963 (D) and 44-3202 (D) Wengert continues to be subject to the Commission's
22 jurisdiction for two years after the termination or lapse of his registration or licensure for the purpose of
23 denying, suspending, or revoking his registration in connection with conduct that began before the
24 termination of his registration.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act, and the Investment Management Act.

2. Respondent Wengert violated A.R.S. § 44-1991 (A)(2) by making untrue statements or misleading omissions of material facts.

3. FINRA's permanent bar of Respondent Wengert's FINRA membership is grounds to revoke Respondent Wengert's registration as a securities salesman, with the Commission pursuant to A.R.S. §§ 44-1962.

4. Specifically, Respondent Wengert is subject to an order of an SRO permanently barring Respondent Wengert from association with any FINRA-regulated broker-dealer in any capacity, for a period of at least six months, within the meaning of A.R.S. §§ 44-1962 (A)(8).

5. Revocation of Respondent Wengert's license would be in the public interest. Respondent Wengert engaged in dishonest and unethical conduct, within the meaning of A.R.S. § 44-3201 (A)(13), as defined by A.A.C. R14-6-203: by exercising discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, contrary to A.A.C. R14-6-203 (4).

6. Notwithstanding that Respondent Wengert is not currently registered with the Commission, under A.R.S. §§ 44-1963 (D) and 44-3202 (D) Respondent Wengert continues to be subject to the Commission's jurisdiction for two years after the termination or lapse of his registration or licensure for the purpose of denying, suspending, or revoking his registration in connection with conduct that began before the termination of his registration.

7. Respondent Wengert is subject to an order of revocation of his registration as a securities salesman pursuant to A.R.S. § 44-1962.

8. Specifically, Respondent Wengert engaged in dishonest and unethical conduct, within the meaning of A.R.S. § 44-1962 (A)(10), as defined by A.A.C. R14-4-130 (A): by executing

1 a transaction pursuant to general discretionary authority for the account of a customer without first
2 obtaining general discretionary authority in writing from such customer, contrary to A.A.C. R14-4-
3 130 (A)(7); by employing, in connection with the purchase or sale of a security, a manipulative or
4 deceptive device or contrivance, contrary to A.C.C. R14-4-130 (A)(14); and while registered as a
5 securities salesman, effected securities transactions which were not recorded on the records of the
6 dealer with whom Respondent Wengert was registered at the time of the transactions, contrary to
7 A.C.C. R14-4-130 (A)(17).

8 9. Respondent Wengert violated A.R.S. § 44-3241 (A)(2) by making untrue statements
9 or misleading omissions of material facts.

10 10. Respondent Wengert's conduct is grounds for a cease and desist order pursuant to
11 A.R.S. §§ 44-1962, 44-2032, 44-3201, and 44-3292.

12 11. Respondent Wengert's conduct is grounds for an order of restitution pursuant to
13 A.R.S. §§ 44-1962, 44-2032, 44-3201, and 44-3292.

14 12. Respondent Wengert's conduct is grounds for administrative penalties under A.R.S.
15 §§ 44-1962, 44-2036, 44-3201, and 44-3296.

16 13. Respondent Wengert acted for the benefit of the marital community and, pursuant to
17 A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the
18 community.

19 III.

20 ORDER

21 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents'
22 consent to the entry of this Order, attached and incorporated by reference, the Commission finds that
23 the following relief is appropriate, in the public interest, and necessary for the protection of investors:

24 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032, and 44-3292, that Respondent Wengert,
25 and any of Respondent Wengert's agents, employees, successors and assigns, permanently cease and
26 desist from violating the Securities Act and the Investment Management Act.

1 IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry
2 of Order.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-1962, 44-2032, 44-3201, and 44-
4 3292, that Respondent Wengert, individually, and the marital community of Respondents Tracy N.
5 Wengert and Jeanette Wengert, jointly and severally, shall pay restitution to the Commission in the
6 principal amount of \$1,522,400 [minus any legal offsets]. Payment is due in full on the date of this
7 Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account
8 controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of
9 4.75 percent per annum from the date of the Order until paid in full.

10 The Commission shall disburse the funds on a pro-rata basis to investors shown on the records
11 of the Commission. Any restitution funds that the Commission cannot disburse because an investor
12 refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor
13 because the investor is deceased and the Commission cannot reasonably identify and locate the
14 deceased investor's spouse or natural children surviving at the time of the distribution, shall be
15 disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission.
16 Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be
17 transferred to the general fund of the state of Arizona.

18 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-1962, 44-2036, 44-3201, and 44-
19 3296, that Respondent Wengert, individually, and the marital community of Respondents Tracy N.
20 Wengert and Jeanette Wengert, jointly and severally, shall pay an administrative penalty in the
21 amount of \$25,000 as a result of the conduct set forth in the Findings of Fact and Conclusions of
22 Law. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona."
23 The penalty amount shall accrue interest at the rate of 4.75 percent per annum from the date of this
24 Order until paid in full.

25 ...

26 ...

1 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
 2 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
 3 shall be applied to the penalty obligation.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent Wengert's
 5 securities salesman registration is revoked.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that Respondent Wengert's
 7 investment adviser representative license is revoked.

8 For purposes of this Order, a bankruptcy filing by any Respondent shall be an act of default.
 9 If Respondents do not comply with this Order, any outstanding balance may be deemed in default
 10 and shall be immediately due and payable.

11 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
 12 Commission may bring further legal proceedings against the Respondent, including application to
 13 the superior court for an order of contempt.

14 IT IS FURTHER ORDERED that this Order shall become effective immediately.

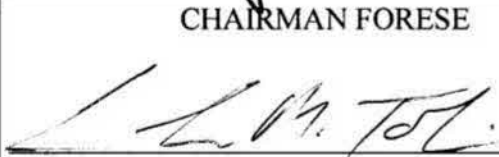
15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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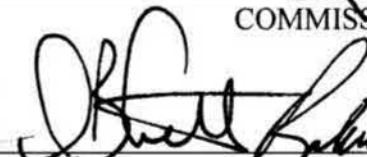
17 CHAIRMAN FORESE

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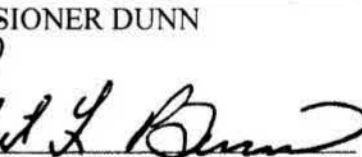
17 COMMISSIONER DUNN

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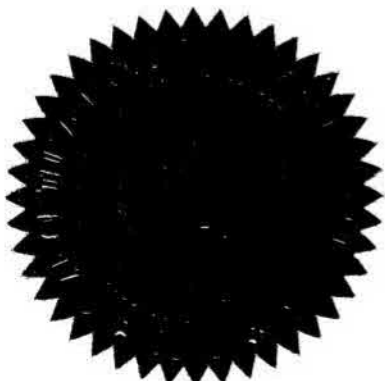
19 COMMISSIONER TOBIN

18 


20 COMMISSIONER LITTLE

18 

20 COMMISSIONER BURNS



22 IN WITNESS WHEREOF, I, TED VOGT, Executive Director
 23 of the Arizona Corporation Commission, have hereunto set my
 24 hand and caused the official seal of the Commission to be
 25 affixed at the Capitol, in the City of Phoenix, this 11th day
 26 of April, 2017.

25 
 26 TED VOGT
 EXECUTIVE DIRECTOR

1
2 DISSENT

3 DISSENT

4 This document is available in alternative formats by contacting Carolyn D. Buck, ADA
5 Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov.

6
7 (MES)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents Tracy N. Wengert and Jeanette Wengert (each individual a
3 “Respondent,” or collectively “Respondents”) admit the jurisdiction of the Commission over the
4 subject matter of this proceeding. Each Respondent acknowledges that they have been fully advised
5 of their right to a hearing to present evidence and call witnesses and each Respondent knowingly and
6 voluntarily waives any and all rights to a hearing before the Commission and all other rights
7 otherwise available under Article 7 of the Investment Management Act, Article 11 of the Securities
8 Act, and Title 14 of the Arizona Administrative Code. Each Respondent acknowledges that this
9 Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to
10 Same (“Order”) constitutes a valid final order of the Commission.

11 2. Each Respondent knowingly and voluntarily waives any right under Article 8 of the
12 Investment Management Act, and Article 12 of the Securities Act to judicial review by any court by
13 way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

14 3. Each Respondent acknowledges and agrees that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. Respondents Tracy N. Wengert and Jeanette Wengert acknowledge that they have
17 been represented by their attorney in this matter, Shane D. Buntrock of Buntrock & Gardner, PLLC.
18 Each Respondent acknowledges that Shane D. Buntrock has apprised them of their rights regarding
19 any potential and actual conflicts of interest arising from joint representation. Respondents Tracy N.
20 Wengert and Jeanette Wengert acknowledge that they have each given their informed consent to such
21 representation.

22 5. Each Respondent acknowledges that they have reviewed this Order with their
23 attorney, Shane D. Buntrock, and understand all terms it contains.

24 6. Respondents admit only for purposes of this proceeding and any other proceeding in
25 which the Commission is a party, the Findings of Fact and Conclusions of Law contained in this
26 Order. Each Respondent agrees that they shall not contest the validity of the Findings of Fact and

1 Conclusions of Law contained in this Order in any present or future proceeding in which the
2 Commission is a party.

3 7. The Respondents further agree that they shall not deny or contest the Findings of Fact
4 and Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding,
5 or (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)").
6 They further agree that in any such proceedings, the Findings of Fact and Conclusions of Law
7 contained in this Order may be taken as true and correct and that this Order shall collaterally estop
8 them from re-litigating with the Commission or any other state agency, in any forum, the accuracy
9 of the Findings of Fact and Conclusions of Law contained in this Order. In the event any Respondent
10 pursues bankruptcy protection in the future, they further agree that in such bankruptcy proceeding,
11 pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

12 A. The obligations incurred as a result of this Order are a result of the conduct set forth
13 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona
14 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

15 B. This Order constitutes a judgment, order, consent order, or decree entered in a state
16 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by
17 Respondents Tracy N. Wengert and Jeanette Wengert pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and
18 a court order for damages, fine, penalty, citation, restitution payment, disgorgement payment,
19 attorney fee, cost or other payment owed by Respondents Tracy N. Wengert and Jeanette Wengert
20 pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

21 8. By consenting to the entry of this Order, each Respondent agrees not to take any action
22 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
23 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
24 basis.

25 9. While this Order settles this administrative matter between Respondents and the
26 Commission, Respondents understand that this Order does not preclude the Commission from

1 instituting other administrative or civil proceedings based on violations that are not addressed by this
2 Order.

3 10. Each Respondent understands that this Order does not preclude the Commission from
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
5 that may be related to the matters addressed by this Order.

6 11. Each Respondent understands that this Order does not preclude any other agency or
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
8 proceedings that may be related to matters addressed by this Order.

9 12. Each Respondent agrees that they will not apply to the state of Arizona for registration
10 as a securities dealer or salesman or for licensure as an investment adviser or investment adviser
11 representative at any time in the future. Each Respondent agrees that they will not exercise any
12 control over any entity that offers or sells securities or provides investment advisory services within
13 or from Arizona at any time in the future.

14 13. Respondents Tracy N. Wengert and Jeanette Wengert acknowledge that any
15 restitution or penalties imposed by this Order are obligations of Tracy N. Wengert as well as their
16 marital community.

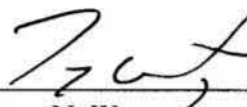
17 14. Each Respondent consents to the entry of this Order and agrees to be fully bound by
18 its terms and conditions.

19 15. Each Respondent acknowledges and understands that if they fail to comply with the
20 provisions of the order and this consent, the Commission may bring further legal proceedings against
21 them, including application to the superior court for an order of contempt.

22 16. Each Respondent understands that default shall render them liable to the Commission
23 for its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.

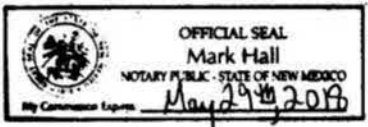
24 17. Each Respondent agrees and understands that if they fail to make any payment as
25 required in the Order, any outstanding balance shall be in default and shall be immediately due and
26

1 payable without notice or demand. Each Respondent agrees and understands that acceptance of any
2 partial or late payment by the Commission is not a waiver of default by the Commission.

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5 
6 Tracy N. Wengert

7 
8 Jeanette Wengert

9 STATE OF New Mexico)
10 ~~ARIZONA~~) ss
County of McKinley)

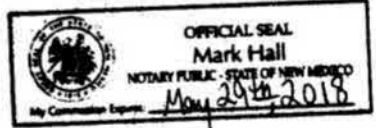


11 SUBSCRIBED AND SWORN TO BEFORE me this 28th day of February,
12

13 
14 NOTARY PUBLIC

15 My commission expires:

16 May 29th, 2018



17 STATE OF New Mexico)
18 ~~ARIZONA~~) ss
County of McKinley)

19 SUBSCRIBED AND SWORN TO BEFORE me this 28th day of February,
20

21 
22 NOTARY PUBLIC

23 My commission expires:

24 May 29th, 2018
25
26

1 SERVICE LIST FOR: TRACY N. WENGERT, et al.

2
3 Shane D. Buntrock, Esq.
4 Buntrock & Gardner Law, PLLC
5 2158 North Gilbert Road, Suite 119
6 Mesa, Arizona 85203
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